

AMENDED IN SENATE FEBRUARY 18, 2014

AMENDED IN SENATE JANUARY 17, 2014

AMENDED IN SENATE SEPTEMBER 6, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 485**

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**Introduced by Assembly Member Gomez**

February 19, 2013

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An act to amend Sections 110003, 110005, 110006, 110007, 110008, 110009, 110011, and 110021 of, and to amend and repeal Section 6253.2 of, the Government Code, to amend Sections 12300.5, 12300.7, *12301.6*, and 14186.35 of, to amend and repeal Sections 10101.1, 12306, and 12306.1 of, and to repeal Section 12302.25 of, the Welfare and Institutions Code, and to amend Section 34 of Chapter 37 of the Statutes of 2013, relating to in-home supportive services.

### LEGISLATIVE COUNSEL'S DIGEST

AB 485, as amended, Gomez. In-home supportive services.

Existing law establishes the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

Existing law establishes, as part of the Coordinated Care Initiative, the In-Home Supportive Services Employer-Employee Relations Act, which serves to resolve disputes regarding wages, benefits, and other

terms and conditions of employment between the California In-Home Supportive Services Authority (Statewide Authority) and recognized employee organizations providing in-home supportive services. Existing law establishes the Statewide Authority and requires the authority to be the entity authorized to meet and confer in good faith regarding wages, benefits, and other terms and conditions of employment with representatives of recognized employee organizations for any individual provider who is employed by a recipient of supportive services.

Existing law provides, as part of the Coordinated Care Initiative, that IHSS is a Medi-Cal benefit available through managed care health care plans in specified counties and requires enrollment of eligible Medi-Cal beneficiaries into managed care pursuant to a specified demonstration project or other provisions, including managed care for long-term services and supports, as one of the conditions that would be required to be completed before the Statewide Authority assumes the specified responsibilities. Existing law provides that no sooner than March 1, 2013, the Statewide Authority shall assume specified responsibilities in a county or city and county upon notification by the Director of Health Care Services that the enrollment of eligible Medi-Cal beneficiaries described in specified provisions of law has been completed in that county or city and county. Under existing law, in counties where IHSS is a Medi-Cal benefit available through managed care health plans, those health plans are required to assume specified duties, including entering into a memorandum of understanding with a county agency to perform specified activities, after the director provides that notification. Under existing law, the assumption of these responsibilities by the Statewide Authority is also known as the county implementation date.

This bill would, instead, make the implementation date January 1, 2015, would delete the reference to the “county” implementation date, and would make conforming changes.

Existing law conditions implementation of the Coordinated Care Initiative, as defined, on whether the Director of Finance estimates that the Coordinated Care Initiative will generate net General Fund savings, as specified. Existing law, with certain exceptions, specifies those provisions of law that are within the scope of the initiative to become inoperative if this condition is not met.

This bill would modify the definition of the Coordinate Care Initiative for the purposes of determining which provisions become inoperative if the condition is not met, and exclude, among others, those provisions

that establish the In-Home Supportive Services Employer-Employee Relations Act, establish the Statewide Authority and determine the duties of, and when those duties are assumed by, the authority, establish the IHSS Fund, which is used to fund the Statewide Authority, and require all counties, commencing July 1, 2012, to have a County IHSS Maintenance of Effort (MOE) and to pay the County IHSS MOE instead of paying the nonfederal share of IHSS costs, as specified. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6253.2 of the Government Code, as  
2 amended by Section 1 of Chapter 37 of the Statutes of 2013, is  
3 amended to read:

4 6253.2. (a) Notwithstanding any other provision of this chapter  
5 to the contrary, information regarding persons paid by the state to  
6 provide in-home supportive services pursuant to Article 7  
7 (commencing with Section 12300) of Chapter 3 of Part 3 of  
8 Division 9 of the Welfare and Institutions Code, or services  
9 provided pursuant to Section 14132.95, 14132.952, or 14132.956  
10 of the Welfare and Institutions Code, is not subject to public  
11 disclosure pursuant to this chapter, except as provided in  
12 subdivision (b).

13 (b) Copies of names, addresses, and telephone numbers of  
14 persons described in subdivision (a) shall be made available, upon  
15 request, to an exclusive bargaining agent and to any labor  
16 organization seeking representation rights pursuant to ~~Section~~  
17 ~~12301.6 or 12302.25 of the Welfare and Institutions Code or the~~  
18 In-Home Supportive Services Employer-Employee Relations Act  
19 (Title 23 (commencing with Section 110000)). This information  
20 shall not be used by the receiving entity for any purpose other than  
21 the employee organizing, representation, and assistance activities  
22 of the labor organization.

23 (c) This section applies solely to individuals who provide  
24 services under the In-Home Supportive Services Program (Article  
25 7 (commencing with Section 12300) of Chapter 3 of Part 3 of  
26 Division 9 of the Welfare and Institutions Code), the Personal Care  
27 Services Program pursuant to Section 14132.95 of the Welfare

1 and Institutions Code, the In-Home Supportive Services Plus  
2 Option pursuant to Section 14132.952 of the Welfare and  
3 Institutions Code, or the Community First Choice Option pursuant  
4 to Section 14132.956 of the Welfare and Institutions Code.

5 (d) Nothing in this section is intended to alter or shall be  
6 interpreted to alter the rights of parties under the In-Home  
7 Supportive Services Employer-Employee Relations Act (Title 23  
8 (commencing with Section 110000)) or any other labor relations  
9 law.

10 SEC. 2. Section 6253.2 of the Government Code, as amended  
11 by Section 2 of Chapter 37 of the Statutes of 2013, is repealed.

12 SEC. 3. Section 110003 of the Government Code is amended  
13 to read:

14 110003. As used in this title:

15 (a) “Board” means the Public Employment Relations Board  
16 established pursuant to Section 3541.

17 (b) “Employee” or “individual provider” means any person  
18 authorized to provide in-home supportive services pursuant to  
19 Article 7 (commencing with Section 12300) of Chapter 3 of Part  
20 3 of Division 9 of the Welfare and Institutions Code, and Sections  
21 14132.95, 14132.952, and 14132.956 of the Welfare and  
22 Institutions Code, pursuant to the individual provider mode, as  
23 referenced in Section 12302.2 of the Welfare and Institutions Code.  
24 As used in this title, “employee” or “individual provider” does not  
25 include any person providing in-home supportive services pursuant  
26 to the county-employed homemaker mode or the contractor mode,  
27 as authorized in Section 12302 of the Welfare and Institutions  
28 Code. Individual providers shall not be deemed to be employees  
29 of the Statewide Authority for any other purpose, except as  
30 expressly set forth in this title.

31 (c) “Employee organization” means an organization that includes  
32 employees, as defined in subdivision (b), and that has as one of  
33 its primary purposes representing those employees in their relations  
34 with the Statewide Authority.

35 (d) “Employer” means, for the purposes of collective bargaining,  
36 the Statewide Authority established pursuant to Section 6531.5.  
37 The in-home supportive services recipient shall be the employer  
38 of an individual in-home supportive services provider with the  
39 unconditional and exclusive right to hire, fire, and supervise his  
40 or her provider.

1 (e) “In-home supportive services” or “IHSS” means services  
2 provided pursuant to Article 7 (commencing with Section 12300)  
3 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions  
4 Code, and Sections 14132.95, 14132.952, and 14132.956 of the  
5 Welfare and Institutions Code.

6 (f) “In-home supportive services recipient” means the individual  
7 who receives the in-home supportive services provided by the  
8 individual provider. The in-home supportive services recipient is  
9 the employer for the purposes of hiring, firing, and supervising  
10 his or her respective individual provider.

11 (g) “Mediation” means effort by an impartial third party to assist  
12 in reconciling a dispute regarding wages, benefits, and other terms  
13 and conditions of employment, as defined in Section 110023,  
14 between representatives of the employer and the recognized  
15 employee organization or recognized employee organizations  
16 through interpretation, suggestion, and advice.

17 (h) “Meet and confer in good faith” means that the employer,  
18 or those representatives as it may designate, and representatives  
19 of recognized employee organizations, shall have the mutual  
20 obligation personally to meet and confer promptly upon request  
21 by either party and continue for a reasonable period of time in  
22 order to exchange freely information, opinions, and proposals, and  
23 to endeavor to reach agreement on matters within the scope of  
24 representation prior to the adoption of the annual Budget Act.

25 (i) “Predecessor agency” means a county or an entity established  
26 pursuant to Section 12301.6 of the Welfare and Institutions Code  
27 ~~before the effective date of this title~~ *January 1, 2015*.

28 (j) “Recognized employee organization” means an employee  
29 organization that has been formally acknowledged as follows:

30 (1) Before the implementation date as described in subdivision  
31 (a) of Section 12300.7 of the Welfare and Institutions Code, by a  
32 county or an entity established pursuant to Section 12301.6 of the  
33 Welfare and Institutions Code, as the representative of individual  
34 providers in its jurisdiction.

35 (2) On or after the implementation date as described in  
36 subdivision (a) of Section 12300.7 of the Welfare and Institutions  
37 Code, by the Statewide Authority, as the representative of  
38 individual providers subject to this title.

1 (k) “Statewide Authority” means the California In-Home  
2 Supportive Services Authority established pursuant to Section  
3 6531.5.

4 SEC. 4. Section 110005 of the Government Code is amended  
5 to read:

6 110005. For the purposes of this title, the implementation date  
7 is defined in subdivision (a) of Section 12300.7 of the Welfare and  
8 Institutions Code.

9 SEC. 5. Section 110006 of the Government Code is amended  
10 to read:

11 110006. For purposes of collective bargaining, and as expressly  
12 set forth in subdivision (d) of Section 110003, the Statewide  
13 Authority is deemed to be the employer of record of individual  
14 providers in each county as of the implementation date. In-home  
15 supportive services recipients shall retain the right to hire, fire,  
16 and supervise the work of the individual providers providing  
17 services to them.

18 SEC. 6. Section 110007 of the Government Code is amended  
19 to read:

20 110007. Individual providers employed by any predecessor  
21 agency as of the implementation date shall retain employee status  
22 and shall not be required by the Statewide Authority to requalify  
23 to receive payment for providing services pursuant to Article 7  
24 (commencing with Section 12300) of Chapter 3 of Part 3 of  
25 Division 9 of the Welfare and Institutions Code. In the same  
26 manner as set forth in subdivision (e) of Section 12305.86 of the  
27 Welfare and Institutions Code, the Statewide Authority shall accept  
28 a clearance that was obtained or accepted by any predecessor  
29 agency pursuant to Article 7 (commencing with Section 12300)  
30 of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions  
31 Code. Existence of a clearance shall be determined by verification  
32 through the case management, information, and payroll system of  
33 the predecessor agency that the predecessor agency has deemed  
34 the provider to be eligible to receive payment for providing services  
35 pursuant to Article 7 (commencing with Section 12300) of Chapter  
36 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

37 SEC. 7. Section 110008 of the Government Code is amended  
38 to read:

39 110008. On the implementation date, separate bargaining units  
40 shall be created consistent with the bargaining units that have been

1 recognized by predecessor agencies. Bargaining units consisting  
2 of employees in a single county shall be the only appropriate unit  
3 for collective bargaining under this title. In those counties where  
4 no recognized employee organization exists as of the  
5 implementation date, a bargaining unit consisting of all employees  
6 in that county shall be deemed an appropriate unit for collective  
7 bargaining.

8 SEC. 8. Section 110009 of the Government Code is amended  
9 to read:

10 110009. If, on the implementation date, individual providers  
11 are represented by a recognized employee organization, the  
12 Statewide Authority shall be deemed the successor employer of  
13 the predecessor agency for the purposes of negotiating a collective  
14 bargaining agreement, and shall be obligated to recognize and to  
15 meet and confer in good faith with the recognized employee  
16 organization on all matters within the scope of representation, as  
17 defined in Section 110023, as to those individual providers.

18 SEC. 9. Section 110011 of the Government Code is amended  
19 to read:

20 110011. (a) Except as otherwise expressly provided in this  
21 title, the enactment of this title shall not be a cause for the employer  
22 or any predecessor agency to modify or eliminate any existing  
23 memorandum of agreement or understanding, or to modify existing  
24 wages, benefits, or other terms and conditions of employment.  
25 Except to the extent set forth in this title, the enactment of this title  
26 shall not prevent the modification of existing wages, benefits, or  
27 terms and conditions of employment through the meet and confer  
28 in good faith process or, in those situations in which the employees  
29 are not represented by a recognized employee organization, through  
30 appropriate procedures.

31 (b) On the implementation date, subject to Section 12306.15 of  
32 the Welfare and Institutions Code, the Statewide Authority shall  
33 assume the predecessor agency's rights and obligations under any  
34 memorandum of understanding or agreement between the  
35 predecessor agency and a recognized employee organization that  
36 is in effect on the implementation date for the duration thereof.  
37 Absent mutual consent to reopen, the terms of any transferred  
38 memorandum of understanding or agreement shall continue until  
39 the memorandum of understanding or agreement has expired. If a  
40 memorandum of understanding or agreement between a recognized

1 employee organization and a predecessor agency has expired and  
2 has not been replaced by a successor memorandum of  
3 understanding or agreement as of the implementation date, the  
4 Statewide Authority shall assume the obligation to meet and confer  
5 in good faith with the recognized employee organization.

6 (c) Notwithstanding any other provision of law, except to the  
7 extent set forth in this chapter and as limited by Section 110023,  
8 the terms and conditions of any memorandum of understanding  
9 or agreement between a predecessor agency and a recognized  
10 employee organization in effect on the implementation date shall  
11 not be reduced, except by mutual agreement between the  
12 recognized employee organization and the Statewide Authority.

13 (d) Nothing in this title shall be construed to relieve any  
14 predecessor agency of its obligation to meet and confer in good  
15 faith with a recognized employee organization pursuant to the  
16 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section  
17 3500) of Division 4 of Title 1) until the implementation date.  
18 Nothing in this title shall permit the predecessor agency to meet  
19 and confer after the Statewide Authority assumes the predecessor  
20 agency's rights and obligations on the implementation date.

21 (e) With the exception of all economic terms covered by Section  
22 12306.15 of the Welfare and Institutions Code and notwithstanding  
23 any other provision of law, beginning July 1, 2012, and ending on  
24 the implementation date as set forth in subdivision (a) of Section  
25 12300.7 of the Welfare and Institutions Code, any alterations or  
26 modifications to either current or expired memoranda of  
27 understanding that were in effect on July 1, 2012, and any newly  
28 negotiated memoranda of understanding or agreements reached  
29 after July 1, 2012, shall be submitted for review to the State  
30 Department of Social Services, hereafter referred to as the  
31 department. This review shall be performed by the department  
32 until the Statewide Authority becomes operational, after which  
33 date the Statewide Authority shall continue to perform this review.  
34 If, upon review, but not later than 180 days before the  
35 implementation date, the department or Statewide Authority  
36 reasonably determines that there are one or more newly negotiated  
37 or amended noneconomic terms in the memorandum of  
38 understanding or agreement to which it objects for a bona fide  
39 business-related reason, the department or Statewide Authority  
40 shall provide written notice to the signatory recognized employee



1 organization of each objection and the reason for it. Upon demand  
2 from the recognized employee organization, the department, or  
3 the Statewide Authority, those parties shall meet and confer  
4 regarding the objection and endeavor to reach agreement prior to  
5 the implementation date. If an agreement is reached, it shall not  
6 become effective prior to the implementation date. If an agreement  
7 is not reached by the implementation date, the objectionable  
8 language is deemed inoperable as of the implementation date. All  
9 terms to which no objection is made shall be deemed accepted by  
10 the Statewide Authority. If the Statewide Authority or the  
11 department fails to provide the 180 days' notice of objection, it  
12 shall be deemed waived.

13 SEC. 10. Section 110021 of the Government Code is amended  
14 to read:

15 110021. If a predecessor agency is party to any memorandum  
16 of understanding or agreement with any bargaining unit that  
17 includes individual providers that contains an agency shop  
18 provision as of the effective date of this title, the predecessor  
19 agency and the employer shall be obligated to honor the terms of  
20 the agency shop provision, including indemnification provisions,  
21 if any, for the duration of the memorandum of understanding or  
22 agreement, and until the adoption of a successor memorandum of  
23 understanding or agreement. However, upon the request of a  
24 recognized employee organization, an agency shop provision in  
25 effect on the implementation date may be reopened for the sole  
26 purpose of renegotiating the terms of that provision in accordance  
27 with this title. The implementation of this title shall not be a cause  
28 for a new agency shop election.

29 SEC. 11. Section 10101.1 of the Welfare and Institutions Code,  
30 as amended by Section 5 of Chapter 37 of the Statutes of 2013, is  
31 amended to read:

32 10101.1. (a) For the 1991–92 fiscal year and each fiscal year  
33 thereafter, the state's share of the costs of the county services block  
34 grant and the in-home supportive services administration  
35 requirements shall be 70 percent of the actual nonfederal  
36 expenditures or the amount appropriated by the Legislature for  
37 that purpose, whichever is less.

38 (b) Federal funds received under Title 20 of the federal Social  
39 Security Act (42 U.S.C. Sec. 1397 et seq.) and appropriated by the  
40 Legislature for the county services block grant and the in-home

1 supportive services administration shall be considered part of the  
2 state share of cost and not part of the federal expenditures for this  
3 purpose.

4 (c) For the period during which Section 12306.15 is operative,  
5 each county's share of the nonfederal costs of the county services  
6 block grant and the in-home supportive services administration  
7 requirements as specified in subdivision (a) shall remain, but the  
8 County IHSS Maintenance of Effort pursuant to Section 12306.15  
9 shall be in lieu of that share.

10 SEC. 12. Section 10101.1 of the Welfare and Institutions Code,  
11 as amended by Section 6 of Chapter 37 of the Statutes of 2013, is  
12 repealed.

13 SEC. 13. Section 12300.5 of the Welfare and Institutions Code  
14 is amended to read:

15 12300.5. (a) The California In-Home Supportive Services  
16 Authority, hereafter referred to as the Statewide Authority,  
17 established pursuant to Section 6531.5 of the Government Code,  
18 shall be the entity authorized to meet and confer in good faith  
19 regarding wages, benefits, and other terms and conditions of  
20 employment in accordance with Title 23 (commencing with Section  
21 110000) of the Government Code, with representatives of  
22 recognized employee organizations for any individual provider  
23 who is employed by a recipient of in-home supportive services  
24 described in Section 12300 after the implementation date as  
25 described in subdivision (a) of Section 12300.7.

26 (b) The Statewide Authority and the Department of Human  
27 Resources and other state departments may enter into a  
28 memorandum of understanding or other agreement to have the  
29 Department of Human Resources meet and confer on behalf of the  
30 Statewide Authority for the purposes described in subdivision (a)  
31 or to provide the Statewide Authority with other services,  
32 including, but not limited to, administrative and legal services.

33 (c) The state, the Statewide Authority, or any county that has  
34 met the conditions in Section 12300.7 shall not be deemed to be  
35 the employer of any individual provider who is employed by a  
36 recipient of in-home supportive services as described in Section  
37 12300 for purposes of liability due to the negligence or intentional  
38 torts of the individual provider.

39 SEC. 14. Section 12300.7 of the Welfare and Institutions Code  
40 is amended to read:

1 12300.7. (a) On January 1, 2015, the California In-Home  
2 Supportive Services Authority shall assume the responsibilities  
3 set forth in Title 23 (commencing with Section 110000) of the  
4 Government Code.

5 (b) A county or city and county, ~~subject to subdivision (a)~~, shall  
6 do one or both of the following:

7 (1) Have the entity that performed functions set forth in the  
8 county ordinance or contract in effect prior to January 1, 2015,  
9 and established pursuant to Section 12301.6, continue to perform  
10 those functions, ~~excluding subdivision (c) of that section. except~~  
11 ~~the functions described in subdivision (a).~~

12 (2) Assume the functions performed by the entity, prior to  
13 January 1, 2015, pursuant to Section 12301.6, ~~excluding~~  
14 ~~subdivision (c) of that section. except the functions described in~~  
15 ~~subdivision (a).~~

16 (c) If a county or city and county assumes the functions  
17 described in paragraph (2) of subdivision (b), it may establish or  
18 contract with an entity for the performance of any or all of the  
19 functions assumed. *In-home supportive services recipients shall*  
20 *retain the right to hire, fire, and supervise the work of the*  
21 *individual providers providing services to them.*

22 *SEC. 15. Section 12301.6 of the Welfare and Institutions Code*  
23 *is amended to read:*

24 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a  
25 county board of supervisors may, at its option, elect to do either  
26 of the following:

27 (1) Contract with a nonprofit consortium to provide for the  
28 delivery of in-home supportive services.

29 (2) Establish, by ordinance, a public authority to provide for  
30 the delivery of in-home supportive services.

31 (b) (1) To the extent that a county elects to establish a public  
32 authority pursuant to paragraph (2) of subdivision (a), the enabling  
33 ordinance shall specify the membership of the governing body of  
34 the public authority, the qualifications for individual members, the  
35 manner of appointment, selection, or removal of members, how  
36 long they shall serve, and other matters as the board of supervisors  
37 deems necessary for the operation of the public authority.

38 (2) A public authority established pursuant to paragraph (2) of  
39 subdivision (a) shall be both of the following:

1 (A) An entity separate from the county, and shall be required  
2 to file the statement required by Section 53051 of the Government  
3 Code.

4 (B) A corporate public body, exercising public and essential  
5 governmental functions and that has all powers necessary or  
6 convenient to carry out the delivery of in-home supportive services,  
7 including the power to contract for services pursuant to Sections  
8 12302 and 12302.1 and that makes or provides for direct payment  
9 to a provider chosen by the recipient for the purchase of services  
10 pursuant to Sections 12302 and 12302.2. Employees of the public  
11 authority shall not be employees of the county for any purpose.

12 (3) (A) As an alternative, the enabling ordinance may designate  
13 the board of supervisors as the governing body of the public  
14 authority.

15 (B) Any enabling ordinance that designates the board of  
16 supervisors as the governing body of the public authority shall  
17 also specify that no fewer than 50 percent of the membership of  
18 the advisory committee shall be individuals who are current or  
19 past users of personal assistance services paid for through public  
20 or private funds or recipients of services under this article.

21 (C) If the enabling ordinance designates the board of supervisors  
22 as the governing body of the public authority, it shall also require  
23 the appointment of an advisory committee of not more than 11  
24 individuals who shall be designated in accordance with  
25 subparagraph (B).

26 (D) Prior to making designations of committee members  
27 pursuant to subparagraph (C), or governing body members in  
28 accordance with paragraph (4), the board of supervisors shall solicit  
29 recommendations of qualified members of either the governing  
30 body of the public authority or of any advisory committee through  
31 a fair and open process that includes the provision of reasonable  
32 written notice to, and a reasonable response time by, members of  
33 the general public and interested persons and organizations.

34 (4) If the enabling ordinance does not designate the board of  
35 supervisors as the governing body of the public authority, the  
36 enabling ordinance shall require the membership of the governing  
37 body to meet the requirements of subparagraph (B) of paragraph  
38 (3).

39 ~~(e) (1) Any public authority created pursuant to this section~~  
40 ~~shall be deemed to be the employer of in-home supportive services~~

1 personnel referred to recipients under paragraph (3) of subdivision  
2 (e) within the meaning of Chapter 10 (commencing with Section  
3 3500) of Division 4 of Title 1 of the Government Code. Recipients  
4 shall retain the right to hire, fire, and supervise the work of any  
5 in-home supportive services personnel providing services to them.

6 ~~(2) (A) Any nonprofit consortium contracting with a county~~  
7 ~~pursuant to this section shall be deemed to be the employer of~~  
8 ~~in-home supportive services personnel referred to recipients~~  
9 ~~pursuant to paragraph (3) of subdivision (e) for the purposes of~~  
10 ~~collective bargaining over wages, hours, and other terms and~~  
11 ~~conditions of employment.~~

12 ~~(B) Recipients shall retain the right to hire, fire, and supervise~~  
13 ~~the work of any in-home supportive services personnel providing~~  
14 ~~services for them.~~

15 ~~(d)~~

16 (c) A public authority established pursuant to this section or a  
17 nonprofit consortium contracting with a county pursuant to this  
18 section, when providing for the delivery of services under this  
19 article by contract in accordance with Sections 12302 and 12302.1  
20 or by direct payment to a provider chosen by a recipient in  
21 accordance with Sections 12302 and 12302.2, shall comply with  
22 and be subject to, all statutory and regulatory provisions applicable  
23 to the respective delivery mode.

24 ~~(e)~~

25 (d) Any nonprofit consortium contracting with a county pursuant  
26 to this section or any public authority established pursuant to this  
27 section shall provide for all of the following functions under this  
28 article, but shall not be limited to those functions:

29 (1) The provision of assistance to recipients in finding in-home  
30 supportive services personnel through the establishment of a  
31 registry.

32 (2) (A) (i) The investigation of the qualifications and  
33 background of potential personnel. Upon the effective date of the  
34 amendments to this section made during the 2009–10 Fourth  
35 Extraordinary Session of the Legislature, the investigation with  
36 respect to any provider in the registry or prospective registry  
37 applicant shall include criminal background checks requested by  
38 the nonprofit consortium or public authority and conducted by the  
39 Department of Justice pursuant to Section 15660, for those public  
40 authorities or nonprofit consortia using the agencies on the effective

1 date of the amendments to this section made during the 2009–10  
2 Fourth Extraordinary Session of the Legislature. Criminal  
3 background checks shall be performed no later than July 1, 2010,  
4 for any provider who is already on the registry on the effective  
5 date of amendments to this section made during the 2009–10 Fourth  
6 Extraordinary Session of the Legislature, for whom a criminal  
7 background check pursuant to this section has not previously been  
8 provided, as a condition of the provider’s continued enrollment in  
9 the IHSS program. Criminal background checks shall be conducted  
10 at the provider’s expense.

11 (ii) Upon notice from the Department of Justice notifying the  
12 public authority or nonprofit consortium that the prospective  
13 registry applicant has been convicted of a criminal offense specified  
14 in Section 12305.81, the public authority or nonprofit consortium  
15 shall deny the request to be placed on the registry for providing  
16 supportive services to any recipient of the In-Home Supportive  
17 Services program.

18 (iii) Commencing 90 days after the effective date of the act that  
19 adds Section 12305.87, and upon notice from the Department of  
20 Justice that an applicant who is subject to the provisions of that  
21 section has been convicted of, or incarcerated following conviction  
22 for, an offense described in subdivision (b) of that section, the  
23 public authority or nonprofit consortium shall deny the applicant’s  
24 request to become a provider of supportive services to any recipient  
25 of in-home supportive services, subject to the individual waiver  
26 and exception processes described in that section. An applicant  
27 who is denied on the basis of Section 12305.87 shall be informed  
28 by the public authority or nonprofit consortium of the individual  
29 waiver and exception processes described in that section.

30 (B) (i) Notwithstanding any other law, the public authority or  
31 nonprofit consortium shall provide an individual with a copy of  
32 his or her state-level criminal offender record information search  
33 response as provided to the entity by the Department of Justice if  
34 the individual has been denied placement on the registry for  
35 providing supportive services to any recipient of the In-Home  
36 Supportive Services program based on this information. The copy  
37 of the state-level criminal offender record information search  
38 response shall be included with the individual’s notice of denial.  
39 Along with the notice of denial, the public authority or public  
40 consortium shall also provide information in plain language on

1 how an individual may contest the accuracy and completeness of,  
2 and refute any erroneous or inaccurate information in, his or her  
3 state-level criminal offender record information search response  
4 as provided by the Department of Justice as authorized by Section  
5 11126 of the Penal Code. The state-level criminal offender record  
6 information search response shall not be modified or altered from  
7 its form or content as provided by the Department of Justice.

8 (ii) The department shall develop a written appeal process for  
9 the current and prospective providers who are determined ineligible  
10 to receive payment for the provision of services in the In-Home  
11 Supportive Services program. Notwithstanding any other law, the  
12 public authority or nonprofit consortium shall provide the  
13 department with a copy of the state-level criminal offender record  
14 information search response as provided to the entity by the  
15 Department of Justice for any individual who has requested an  
16 appeal of a denial of placement on the registry for providing  
17 supportive services to any recipient of the In-Home Supportive  
18 Services program based on clause (ii) or (iii) of subparagraph (A).  
19 The state-level criminal offender record information search  
20 response shall not be modified or altered from its form or content  
21 as provided by the Department of Justice and shall be provided to  
22 the address specified by the department in its written request.

23 (C) This paragraph shall not be construed to prohibit the  
24 Department of Justice from assessing a fee pursuant to Section  
25 11105 or 11123 of the Penal Code to cover the cost of furnishing  
26 summary criminal history information.

27 (D) As used in this section, “nonprofit consortium” means a  
28 nonprofit public benefit corporation that has all powers necessary  
29 to carry out the delivery of in-home supportive services under the  
30 delegated authority of a government entity.

31 (E) A nonprofit consortium or a public authority authorized to  
32 secure a criminal background check clearance pursuant to this  
33 section shall accept a clearance for an applicant described in clause  
34 (i) of subparagraph (A) who has been deemed eligible by another  
35 nonprofit consortium, public authority, or county with criminal  
36 background check authority pursuant to either Section 12305.86  
37 or this section, to receive payment for providing services pursuant  
38 to this article. Existence of a clearance shall be determined by  
39 verification through the case management, information, and  
40 payroll system, that another county, nonprofit consortium, or

1 public authority with criminal background check authority pursuant  
2 to Section 12305.86 or this section has deemed the current or  
3 prospective provider to be eligible to receive payment for providing  
4 services pursuant to this article.

5 (3) Establishment of a referral system under which in-home  
6 supportive services personnel shall be referred to recipients.

7 (4) Providing for training for providers and recipients.

8 (5) (A) Performing any other functions related to the delivery  
9 of in-home supportive services.

10 (B) (i) Upon request of a recipient of in-home supportive  
11 services pursuant to this chapter, or a recipient of personal care  
12 services under the Medi-Cal program pursuant to Section 14132.95,  
13 a public authority or nonprofit consortium may provide a criminal  
14 background check on a nonregistry applicant or provider from the  
15 Department of Justice, in accordance with clause (i) of  
16 subparagraph (A) of paragraph (2) of subdivision (e). If the person  
17 who is the subject of the criminal background check is not hired  
18 or is terminated because of the information contained in the  
19 criminal background report, the provisions of subparagraph (B)  
20 of paragraph (2) of subdivision (e) shall apply.

21 (ii) A recipient of in-home supportive services pursuant to this  
22 chapter or a recipient of personal care services under the Medi-Cal  
23 program may elect to employ an individual as their service provider  
24 notwithstanding the individual's record of previous criminal  
25 convictions, unless those convictions include any of the offenses  
26 specified in Section 12305.81.

27 (6) Ensuring that the requirements of the personal care option  
28 pursuant to Subchapter 19 (commencing with Section 1396) of  
29 Chapter 7 of Title 42 of the United States Code are met.

30 ~~(f)~~

31 (e) (1) Any nonprofit consortium contracting with a county  
32 pursuant to this section or any public authority created pursuant  
33 to this section shall be deemed not to be the employer of in-home  
34 supportive services personnel referred to recipients under this  
35 section for purposes of liability due to the negligence or intentional  
36 torts of the in-home supportive services personnel.

37 (2) In no case shall a nonprofit consortium contracting with a  
38 county pursuant to this section or any public authority created  
39 pursuant to this section be held liable for action or omission of any  
40 in-home supportive services personnel whom the nonprofit



1 consortium or public authority did not list on its registry or  
2 otherwise refer to a recipient.

3 (3) Counties and the state shall be immune from any liability  
4 resulting from their implementation of this section in the  
5 administration of the In-Home Supportive Services program. Any  
6 obligation of the public authority or consortium pursuant to this  
7 section, whether statutory, contractual, or otherwise, shall be the  
8 obligation solely of the public authority or nonprofit consortium,  
9 and shall not be the obligation of the county or state.

10 ~~(g)~~

11 (f) Any nonprofit consortium contracting with a county pursuant  
12 to this section shall ensure that it has a governing body that  
13 complies with the requirements of subparagraph (B) of paragraph  
14 (3) of subdivision (b) or an advisory committee that complies with  
15 subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

16 ~~(h)~~

17 (g) Recipients of services under this section may elect to receive  
18 services from in-home supportive services personnel who are not  
19 referred to them by the public authority or nonprofit consortium.  
20 Those personnel shall be referred to the public authority or  
21 nonprofit consortium for the purposes of wages, benefits, and other  
22 terms and conditions of employment.

23 ~~(i)~~

24 (h) (1) Nothing in this section shall be construed to affect the  
25 state's responsibility with respect to the state payroll system,  
26 unemployment insurance, or workers' compensation and other  
27 provisions of Section 12302.2 for providers of in-home supportive  
28 services.

29 (2) The Controller shall make any deductions from the wages  
30 of in-home supportive services personnel, who are employees of  
31 ~~a public authority pursuant to paragraph (1) of subdivision (e); the~~  
32 *Statewide Authority established pursuant to Section 6531.5 of the*  
33 *Government Code*, that are agreed to by ~~that public authority the~~  
34 *Statewide Authority* in collective bargaining with the designated  
35 representative of the in-home supportive services personnel  
36 ~~pursuant to Chapter 10 (commencing with Section 3500) of~~  
37 ~~Division 4 of Title 1~~ *Title 23 (commencing with Section 110000)*  
38 of the Government Code and transfer the deducted funds as directed  
39 in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payroll system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

~~(j)~~

(i) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

~~(k)~~

(j) Notwithstanding any other law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

~~(l)~~

(k) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for

1 filing. The regulations shall become effective immediately upon  
2 filing by the Secretary of State.

3 (3) Except as otherwise provided for by Section 10554, the  
4 Office of Administrative Law shall provide for the printing and  
5 publication of these regulations in the California Code of  
6 Regulations. Emergency regulations adopted pursuant to this  
7 subdivision shall remain in effect for no more than 180 days.

8 ~~(m)~~

9 (l) (1) In the event that a county elects to form a nonprofit  
10 consortium or public authority pursuant to subdivision (a) before  
11 the State Department of Health Care Services has obtained all  
12 necessary federal approvals pursuant to paragraph (3) of  
13 subdivision (j) of Section 14132.95, all of the following shall apply:

14 (A) Subdivision (d) shall apply only to those matters that do  
15 not require federal approval.

16 (B) The second sentence of subdivision (h) shall not be  
17 operative.

18 (C) The nonprofit consortium or public authority shall not  
19 provide services other than those specified in paragraphs (1), (2),  
20 (3), (4), and (5) of subdivision (e).

21 (2) Paragraph (1) shall become inoperative when the State  
22 Department of Health Care Services has obtained all necessary  
23 federal approvals pursuant to paragraph (3) of subdivision (j) of  
24 Section 14132.95.

25 ~~(n)~~

26 (m) (1) One year after the effective date of the first approval  
27 by the department granted to the first public authority, the Bureau  
28 of State Audits shall commission a study to review the performance  
29 of that public authority.

30 (2) The study shall be submitted to the Legislature and the  
31 Governor not later than two years after the effective date of the  
32 approval specified in subdivision (a). The study shall give special  
33 attention to the health and welfare of the recipients under the public  
34 authority, including the degree to which all required services have  
35 been delivered, out-of-home placement rates, prompt response to  
36 recipient complaints, and any other issue the director deems  
37 relevant.

38 (3) The report shall make recommendations to the Legislature  
39 and the Governor for any changes to this section that will further

1 ensure the well-being of recipients and the most efficient delivery  
2 of required services.

3 ~~(e)~~

4 (n) Commencing July 1, 1997, the department shall provide  
5 annual reports to the appropriate fiscal and policy committees of  
6 the Legislature on the efficacy of the implementation of this  
7 section, and shall include an assessment of the quality of care  
8 provided pursuant to this section.

9 ~~(p)~~

10 (o) (1) Notwithstanding any other law, and except as provided  
11 in paragraph (2), the department shall, no later than January 1,  
12 2009, implement subparagraphs (A) and (B) through an all-county  
13 letter from the director:

14 (A) Subparagraphs (A) and (B) of paragraph (2) of subdivision  
15 (e).

16 (B) Subparagraph (B) of paragraph (5) of subdivision (e).

17 (2) The department shall, no later than July 1, 2009, adopt  
18 regulations to implement subparagraphs (A) and (B) of paragraph  
19 (1).

20 ~~(q)~~

21 (p) The amendments made to paragraphs (2) and (5) of  
22 subdivision (e) made by the act that added this subdivision during  
23 the 2007–08 Regular Session of the Legislature shall be  
24 implemented only to the extent that an appropriation is made in  
25 the annual Budget Act or other statute, except for the amendments  
26 that added subparagraph (D) of paragraph (2) of subdivision (e),  
27 which shall go into effect January 1, 2009.

28 ~~SEC. 15.~~

29 *SEC. 16.* Section 12302.25 of the Welfare and Institutions  
30 Code, as amended by Section 34 of Chapter 8 of the Statutes of  
31 2011, is repealed.

32 ~~SEC. 16.~~

33 *SEC. 17.* Section 12306 of the Welfare and Institutions Code,  
34 as amended by Section 8 of Chapter 37 of the Statutes of 2013, is  
35 amended to read:

36 12306. (a) The state and counties shall share the annual cost  
37 of providing services under this article as specified in this section.

38 (b) Except as provided in subdivisions (c) and (d), the state shall  
39 pay to each county, from the General Fund and any federal funds  
40 received under Title XX of the federal Social Security Act available

1 for that purpose, 65 percent of the cost of providing services under  
2 this article, and each county shall pay 35 percent of the cost of  
3 providing those services.

4 (c) For services eligible for federal funding pursuant to Title  
5 XIX of the federal Social Security Act under the Medi-Cal program  
6 ~~and~~, and except as provided in subdivisions (b) and (d), the state  
7 shall pay to each county, from the General Fund and any funds  
8 available for that purpose, 65 percent of the nonfederal cost of  
9 providing services under this article, and each county shall pay 35  
10 percent of the nonfederal cost of providing those services.

11 (d) (1) For the period of July 1, 1992, to June 30, 1994,  
12 inclusive, the state's share of the cost of providing services under  
13 this article shall be limited to the amount appropriated for that  
14 purpose in the annual Budget Act.

15 (2) The department shall restore the funding reductions required  
16 by subdivision (c) of Section 12301, fully or in part, as soon as  
17 administratively practicable, if the amount appropriated from the  
18 General Fund for the 1992–93 fiscal year under this article is  
19 projected to exceed the sum of the General Fund expenditures  
20 under Section 14132.95 and the actual General Fund expenditures  
21 under this article for the 1992–93 fiscal year. The entire amount  
22 of the excess shall be applied to the restoration. Services shall not  
23 be restored under this paragraph until the Department of Finance  
24 has determined that the restoration of services would result in no  
25 additional costs to the state or to the counties relative to the  
26 combined state appropriation and county matching funds for  
27 in-home supportive services under this article in the 1992–93 fiscal  
28 year.

29 (e) For the period during which Section 12306.15 is operative,  
30 each county's share of the costs of providing services pursuant to  
31 this article specified in subdivisions (b) and (c) shall remain, but  
32 the County IHSS Maintenance of Effort pursuant to Section  
33 12306.15 shall be in lieu of that share.

34 ~~SEC. 17.~~

35 *SEC. 18.* Section 12306 of the Welfare and Institutions Code,  
36 as amended by Section 9 of Chapter 37 of the Statutes of 2013, is  
37 repealed.

1     ~~SEC. 18.~~

2     *SEC. 19.* Section 12306.1 of the Welfare and Institutions Code,  
3 as amended by Section 10 of Chapter 37 of the Statutes of 2013,  
4 is amended to read:

5     12306.1. (a) When any increase in provider wages or benefits  
6 is negotiated or agreed to by a public authority or nonprofit  
7 consortium under Section 12301.6, then the county shall use  
8 county-only funds to fund both the county share and the state share,  
9 including employment taxes, of any increase in the cost of the  
10 program, unless otherwise provided for in the annual Budget Act  
11 or appropriated by statute. No increase in wages or benefits  
12 negotiated or agreed to pursuant to this section shall take effect  
13 unless and until, prior to its implementation, the department has  
14 obtained the approval of the State Department of Health Care  
15 Services for the increase pursuant to a determination that it is  
16 consistent with federal law and to ensure federal financial  
17 participation for the services under Title XIX of the federal Social  
18 Security Act, and unless and until all of the following conditions  
19 have been met:

20     (1) Each county has provided the department with  
21 documentation of the approval of the county board of supervisors  
22 of the proposed public authority or nonprofit consortium rate,  
23 including wages and related expenditures. The documentation shall  
24 be received by the department before the department and the State  
25 Department of Health Care Services may approve the increase.

26     (2) Each county has met department guidelines and regulatory  
27 requirements as a condition of receiving state participation in the  
28 rate.

29     (b) Any rate approved pursuant to subdivision (a) shall take  
30 effect commencing on the first day of the month subsequent to the  
31 month in which final approval is received from the department.  
32 The department may grant approval on a conditional basis, subject  
33 to the availability of funding.

34     (c) The state shall pay 65 percent, and each county shall pay 35  
35 percent, of the nonfederal share of wage and benefit increases  
36 negotiated by a public authority or nonprofit consortium pursuant  
37 to Section 12301.6 and associated employment taxes, only in  
38 accordance with subdivisions (d) to (f), inclusive.

39     (d) (1) The state shall participate as provided in subdivision (c)  
40 in wages up to seven dollars and fifty cents (\$7.50) per hour and

1 individual health benefits up to sixty cents (\$0.60) per hour for all  
2 public authority or nonprofit consortium providers. This paragraph  
3 shall be operative for the 2000–01 fiscal year and each year  
4 thereafter unless otherwise provided in paragraphs (2), (3), (4),  
5 and (5), and without regard to when the wage and benefit increase  
6 becomes effective.

7 (2) The state shall participate as provided in subdivision (c) in  
8 a total of wages and individual health benefits up to nine dollars  
9 and ten cents (\$9.10) per hour, if wages have reached at least seven  
10 dollars and fifty cents (\$7.50) per hour. Counties shall determine,  
11 pursuant to the collective bargaining process provided for in  
12 subdivision (c) of Section 12301.6, what portion of the nine dollars  
13 and ten cents (\$9.10) per hour shall be used to fund wage increases  
14 above seven dollars and fifty cents (\$7.50) per hour or individual  
15 health benefit increases, or both. This paragraph shall be operative  
16 for the 2001–02 fiscal year and each fiscal year thereafter, unless  
17 otherwise provided in paragraphs (3), (4), and (5).

18 (3) The state shall participate as provided in subdivision (c) in  
19 a total of wages and individual health benefits up to ten dollars  
20 and ten cents (\$10.10) per hour, if wages have reached at least  
21 seven dollars and fifty cents (\$7.50) per hour. Counties shall  
22 determine, pursuant to the collective bargaining process provided  
23 for in subdivision (c) of Section 12301.6, what portion of the ten  
24 dollars and ten cents (\$10.10) per hour shall be used to fund wage  
25 increases above seven dollars and fifty cents (\$7.50) per hour or  
26 individual health benefit increases, or both. This paragraph shall  
27 be operative commencing with the next state fiscal year for which  
28 the May Revision forecast of General Fund revenue, excluding  
29 transfers, exceeds by at least 5 percent, the most current estimate  
30 of revenue, excluding transfers, for the year in which paragraph  
31 (2) became operative.

32 (4) The state shall participate as provided in subdivision (c) in  
33 a total of wages and individual health benefits up to eleven dollars  
34 and ten cents (\$11.10) per hour, if wages have reached at least  
35 seven dollars and fifty cents (\$7.50) per hour. Counties shall  
36 determine, pursuant to the collective bargaining process provided  
37 for in subdivision (c) of Section 12301.6, what portion of the eleven  
38 dollars and ten cents (\$11.10) per hour shall be used to fund wage  
39 increases or individual health benefits, or both. This paragraph  
40 shall be operative commencing with the next state fiscal year for

1 which the May Revision forecast of General Fund revenue,  
2 excluding transfers, exceeds by at least 5 percent, the most current  
3 estimate of revenues, excluding transfers, for the year in which  
4 paragraph (3) became operative.

5 (5) The state shall participate as provided in subdivision (c) in  
6 a total cost of wages and individual health benefits up to twelve  
7 dollars and ten cents (\$12.10) per hour, if wages have reached at  
8 least seven dollars and fifty cents (\$7.50) per hour. Counties shall  
9 determine, pursuant to the collective bargaining process provided  
10 for in subdivision (c) of Section 12301.6, what portion of the  
11 twelve dollars and ten cents (\$12.10) per hour shall be used to fund  
12 wage increases above seven dollars and fifty cents (\$7.50) per hour  
13 or individual health benefit increases, or both. This paragraph shall  
14 be operative commencing with the next state fiscal year for which  
15 the May Revision forecast of General Fund revenue, excluding  
16 transfers, exceeds by at least 5 percent, the most current estimate  
17 of revenues, excluding transfers, for the year in which paragraph  
18 (4) became operative.

19 (e) (1) On or before May 14 immediately prior to the fiscal  
20 year for which state participation is provided under paragraphs (2)  
21 to (5), inclusive, of subdivision (d), the Director of Finance shall  
22 certify to the Governor, the appropriate committees of the  
23 Legislature, and the department that the condition for each  
24 subdivision to become operative has been met.

25 (2) For purposes of certifications under paragraph (1), the  
26 General Fund revenue forecast, excluding transfers, that is used  
27 for the relevant fiscal year shall be calculated in a manner that is  
28 consistent with the definition of General Fund revenues, excluding  
29 transfers, that was used by the Department of Finance in the  
30 2000–01 Governor’s Budget revenue forecast as reflected on  
31 Schedule 8 of the Governor’s Budget.

32 (f) Any increase in overall state participation in wage and benefit  
33 increases under paragraphs (2) to (5), inclusive, of subdivision (d),  
34 shall be limited to a wage and benefit increase of one dollar (\$1)  
35 per hour with respect to any fiscal year. With respect to actual  
36 changes in specific wages and health benefits negotiated through  
37 the collective bargaining process, the state shall participate in the  
38 costs, as approved in subdivision (c), up to the maximum levels  
39 as provided under paragraphs (2) to (5), inclusive, of subdivision  
40 (d).



(g) For the period during which Section 12306.15 is operative, each county's share of the costs of negotiated wage and benefit increases specified in subdivision (c) shall remain, but the County IHSS Maintenance of Effort pursuant to Section 12306.15 shall be in lieu of that share.

~~SEC. 19.~~

*SEC. 20.* Section 12306.1 of the Welfare and Institutions Code, as amended by Section 11 of Chapter 37 of the Statutes of 2013, is repealed.

~~SEC. 20.~~

*SEC. 21.* Section 14186.35 of the Welfare and Institutions Code is amended to read:

14186.35. (a) Not sooner than March 1, 2013, in-home supportive services (IHSS) shall be a Medi-Cal benefit available through managed care health plans in a county where this article is effective. Managed care health plans shall cover IHSS in accordance with the standards and requirements set forth in Article 7 (commencing with Section 12300) of Chapter 3. Specifically, managed care health plans shall do all of the following:

(1) Ensure access to, provision of, and payment for IHSS for individuals who meet the eligibility criteria for IHSS.

(2) Ensure recipients retain the right to be the employer, to select, engage, direct, supervise, schedule, and terminate IHSS providers in accordance with Section 12301.6.

(3) Assume all financial liability for payment of IHSS services for recipients receiving said services pursuant to managed care.

(4) Create a care coordination team, as needed, unless the consumer objects. If the consumer is an IHSS recipient, his or her participation and the participation of his or her provider shall be at the recipient's option. The care coordination team shall include the consumer, his or her authorized representative, managed care health plan, county social services agency, Community Based Adult Services (CBAS) case manager for CBAS clients, Multipurpose Senior Services Program (MSSP) case manager for MSSP clients, and may include others as identified by the consumer.

(5) Maintain the paramedical role and function of providers as authorized pursuant to Sections 12300 and 12301.

(6) Ensure compliance with all requirements set forth in Section 14132.956 and any resulting state plan amendments.

1 (7) Adhere to quality assurance provisions and individual data  
2 and other standards and requirements as specified by the State  
3 Department of Social Services including state and federal quality  
4 assurance requirements.

5 (8) Share confidential beneficiary data with the contractors  
6 specified in this section to improve care coordination, promote  
7 shared understanding of the consumer's needs, and ensure  
8 appropriate access to IHSS and other long-term services and  
9 supports.

10 (9) (A) Enter into a memorandum of understanding with a  
11 county agency and the county's public authority or nonprofit  
12 consortium pursuant to Section 12301.6 to continue to perform  
13 their respective functions and responsibilities pursuant to the  
14 existing ordinance or contract until the implementation date set  
15 forth in subdivision (a) of Section 12300.7.

16 (B) Following the implementation date set forth in subdivision  
17 (a) of Section 12300.7, enter into a memorandum of understanding  
18 with the county agencies to perform the following activities:

19 (i) Assess, approve, and authorize each recipient's initial and  
20 continuing need for services pursuant to Article 7 (commencing  
21 with Section 12300) of Chapter 3. County agency assessments  
22 shall be shared with the care coordination teams established under  
23 paragraph (4), when applicable, and the county agency thereafter  
24 may receive and consider additional input from the care  
25 coordination team.

26 (ii) Plans may contract with counties for additional assessments  
27 for purposes of paragraph (6) of subdivision (b) of Section 14186.

28 (iii) Enroll providers, conduct provider orientation, and retain  
29 enrollment documentation pursuant to Sections 12301.24 and  
30 12305.81.

31 (iv) Conduct criminal background checks on all potential  
32 providers and exclude providers consistent with the provisions set  
33 forth in Sections 12305.81, 12305.86, and 12305.87.

34 (v) Provide assistance to IHSS recipients in finding eligible  
35 providers through the establishment of a provider registry as well  
36 as provide training for providers and recipients as set forth in  
37 Section 12301.6.

38 (vi) Refer all providers to the California In-Home Supportive  
39 Services Authority ~~or nonprofit consortium~~ for the purposes of  
40 wages, benefits, and other terms and conditions of employment in

1 accordance with ~~subdivision (a) of Section 12300.7 and Title 23~~  
2 (commencing with Section 110000) of the Government Code.

3 (vii) Pursue overpayment recovery pursuant to Section 12305.83.

4 (viii) Perform quality assurance activities including routine case  
5 reviews, home visits, and detecting and reporting suspected fraud  
6 pursuant to Section 12305.71.

7 (ix) Share confidential data necessary to implement the  
8 provisions of this section.

9 (x) Appoint an advisory committee of not more than 11 people,  
10 and no less than 50 percent of the membership of the advisory  
11 committee shall be individuals who are current or past users of  
12 personal assistance paid for through public or private funds or  
13 recipients of IHSS services.

14 (xi) Continue to perform other functions necessary for the  
15 administration of the IHSS program pursuant to Article 7  
16 (commencing with Section 12300) of Chapter 3 and regulations  
17 promulgated by the State Department of Social Services pursuant  
18 to that article.

19 (C) A county may contract with an entity or may establish a  
20 public authority pursuant to Section 12301.6 for the performance  
21 of any or all of the activities set forth in a contract with a managed  
22 care health plan pursuant to this section.

23 (10) Enter into a contract with the State Department of Social  
24 Services to perform the following activities:

25 (A) Pay wages and benefits to IHSS providers in accordance  
26 with the wages and benefits negotiated pursuant to Title 23  
27 (commencing with Section 110000) of the Government Code.

28 (B) Perform obligations on behalf of the IHSS recipient as the  
29 employer of his or her provider, including unemployment  
30 compensation, disability benefits, applicable federal and state  
31 taxes, and federal old age survivor's and disability insurance  
32 through the state's payroll system for IHSS in accordance with  
33 Sections 12302.2 and 12317.

34 (C) Provide technical assistance and support for all  
35 payroll-related activities involving the state's payroll system for  
36 IHSS, including, but not limited to, the monthly restaurant  
37 allowance as set forth in Section 12303.7, the monthly cash  
38 payment in advance as set forth in Section 12304, and the direct  
39 deposit program as set forth in Section 12304.4.

1 (D) Share recipient and provider data with managed care health  
2 plans for members who are receiving IHSS to support care  
3 coordination.

4 (E) Provide an option for managed care health plans to  
5 participate in quality monitoring activities conducted by the State  
6 Department of Social Services pursuant to subdivision (f) of  
7 Section 12305.7 for recipients who are plan members.

8 (11) In concert with the department, timely reimburse the state  
9 for payroll and other obligations of the beneficiary as the employer,  
10 including unemployment compensation, disability benefits,  
11 applicable federal and state taxes, and federal old age survivors  
12 and disability insurance benefits through the state's payroll system.

13 (12) In a county where services are provided in the homemaker  
14 mode, enter into a contract with the county to implement the  
15 provision of services pursuant to the homemaker mode as set forth  
16 in Section 12302.

17 (13) Retain the IHSS individual provider mode as a choice  
18 available to beneficiaries in all participating managed care health  
19 plans in each county.

20 (14) In a county where services are provided pursuant to a  
21 contract, and as needed, enter into a contract with a city, county,  
22 or city and county agency, a local health district, a voluntary  
23 nonprofit agency, or a proprietary agency as set forth in Section  
24 12302 and in accordance with Section 12302.6.

25 (15) Assume the financial risk associated with the cost of payroll  
26 and associated activities set forth in paragraph (10).

27 (b) IHSS recipients receiving services through managed care  
28 health plans shall retain all of the following:

29 (1) The responsibilities as the employer of the IHSS provider  
30 for the purposes of hiring, firing, and supervising their provider  
31 of choice as set forth in Section 12301.6.

32 (2) The ability to appeal any action relating to his or her  
33 application for or receipt of services pursuant to Article 7  
34 (commencing with Section 12300) of Chapter 3.

35 (3) The right to employ a provider applicant who has been  
36 convicted of an offense specified in Section 12305.87 by submitting  
37 a waiver of the exclusion.

38 (4) The ability to request a reassessment pursuant to Section  
39 12301.1.

1 (c) The department and the State Department of Social Services,  
2 along with the counties, managed care health plans, consumers,  
3 advocates, and other stakeholders, shall develop a referral process  
4 and informational materials for the appeals process that is  
5 applicable to home- and community-based services plan benefits  
6 authorized by a managed care health plan. The process established  
7 by this paragraph shall ensure ease of access for consumers.

8 (d) For services provided through managed care health plans,  
9 the IHSS provider shall continue to adhere to the requirements set  
10 forth in subdivision (b) of Section 12301.24, subdivision (a) of  
11 Section 12301.25, subdivision (a) of Section 12305.81, and  
12 subdivision (a) of Section 12306.5.

13 (e) In accordance with Section 14186.2, as the provision of  
14 IHSS transitions to managed care health plans in a phased-in  
15 approach, the State Department of Social Services shall do all of  
16 the following:

17 (1) Retain program administration functions, in coordination  
18 with the department, including policy development, provider  
19 appeals and general exceptions, and quality assurance and program  
20 integrity for the IHSS program in accordance with Article 7  
21 (commencing with Section 12300) of Chapter 3.

22 (2) Perform the obligations on behalf of the recipient as  
23 employer relating to workers' compensation as set forth in Section  
24 12302.2 and Section 12302.21 for those entities that have entered  
25 into a contract with a managed care health plan pursuant to Section  
26 12302.6.

27 (3) Retain responsibilities related to the hearing process for  
28 IHSS recipient appeals as set forth in Chapter 7 (commencing with  
29 Section 10950) of Part 2.

30 (4) Continue to have access to and provide confidential recipient  
31 data necessary for the administration of the program.

32 (f) A managed care health plan shall not be deemed to be the  
33 employer of an individual in-home supportive services provider  
34 referred to recipients under this section for purposes of liability  
35 due to the negligence or intentional torts of the individual provider.

36 ~~SEC. 21.~~

37 *SEC. 22.* Section 34 of Chapter 37 of the Statutes of 2013 is  
38 amended to read:

39 *Sec. 34.* (a) At least 30 days prior to enrollment of beneficiaries  
40 into the Coordinated Care Initiative, the Director of Finance shall

1 estimate the amount of net General Fund savings obtained from  
2 the implementation of the Coordinated Care Initiative. This  
3 estimate shall take into account any net savings to the General  
4 Fund achieved through the tax imposed pursuant to Article 5  
5 (commencing with Section 6174) of Chapter 2 of Part 1 of Division  
6 2 of the Revenue and Taxation Code Article 5 (commencing with  
7 Section 6174).

8 (b) (1) By January 10 of each fiscal year after implementation  
9 of the Coordinated Care Initiative, for as long as the Coordinated  
10 Care Initiative remains operative, the Director of Finance shall  
11 estimate the amount of net General Fund savings obtained from  
12 the implementation of the Coordinated Care Initiative.

13 (2) Savings shall be determined under this subdivision by  
14 comparing the estimated costs of the Coordinated Care Initiative,  
15 as approved by the federal government, and the estimated costs of  
16 the program if the Coordinated Care Initiative were not operative.  
17 The determination shall also include any net savings to the General  
18 Fund achieved through the tax imposed pursuant to Article 5  
19 (commencing with Section 6174) of Chapter 2 of Part 1 of Division  
20 2 of the Revenue and Taxation Code.

21 (3) The estimates prepared by the Director of Finance, in  
22 consultation with the Director of Health Care Services, shall be  
23 provided to the Legislature.

24 (c) (1) Notwithstanding any other law, if, at least 30 days prior  
25 to enrollment of beneficiaries into the Coordinated Care Initiative,  
26 the Director of Finance estimates pursuant to subdivision (a) that  
27 the Coordinated Care Initiative will not generate net General Fund  
28 savings, then the activities to implement the Coordinated Care  
29 Initiative shall be suspended immediately and the Coordinated  
30 Care Initiative shall become inoperative July 1, 2014.

31 (2) If the Coordinated Care Initiative becomes inoperative  
32 pursuant to this subdivision, the Director of Health Care Services  
33 shall provide any necessary notifications to any affected entities.

34 (3) For purposes of this subdivision and subdivision (d) only,  
35 “Coordinated Care Initiative” means all of the following statutes  
36 and any amendments to the following:

37 (A) Sections 14132.275, 14183.6, and 14301.1 of the Welfare  
38 and Institutions Code, as amended by Chapter 37 of the Statutes  
39 of 2013.

1 (B) Sections 14132.276, 14132.277, 14182.16, 14182.17,  
2 14182.18, and 14301.2 of the Welfare and Institutions Code.

3 (C) Article 5.7 (commencing with Section 14186) of Chapter  
4 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

5 (D) Sections 12302.6, ~~12330~~, 14186.35, and 14186.36 of the  
6 Welfare and Institutions Code.

7 (E) The amendments made to Section 12302.21 of the Welfare  
8 and Institutions Code, as made by Chapter 439 of the Statutes of  
9 2012.

10 (d) ~~(4)~~ Notwithstanding any other law, and beginning in 2015,  
11 if the Director of Finance estimates pursuant to subdivision (b)  
12 that the Coordinated Care Initiative will not generate net General  
13 Fund savings, the Coordinated Care Initiative shall become  
14 inoperative January 1 of the following calendar year.

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